

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PHILLIP McCain,
TDCJ-CID 01298655,
Plaintiff,

v.

MARLENE McNEESE, *et al.*,
Defendants.

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CIVIL ACTION NO. H-05-2415

OPINION ON DISMISSAL

Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice–Correctional Institutions Division, has filed a civil rights complaint (Docket Entry No.1) and an application to proceed *in forma pauperis*. (Docket Entry No.2). A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate’s privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff’s complaint does not indicate that he is any danger.

Plaintiff’s litigation history reveals that he falls within the provisions of section 1915(g). Plaintiff has filed at least twenty-six lawsuits in federal courts while incarcerated in prison or a detention facility. At least seventeen have been dismissed as either frivolous, malicious, or for failure to state a claim upon which relief may be granted. *See McCain v. Scott*, Civil Action No.6:97cv662 (E.D. Tex. July 22, 1997).

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g). Plaintiff's application to proceed *in form pauperis* (Docket Entry No.2) is DENIED.

The Clerk will provide a copy of this Order to all parties, and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Betty Parker.

SIGNED at Houston, Texas, on July 29th, 2005.

A handwritten signature in black ink, appearing to read "Melinda Harmon". The signature is fluid and cursive, with the first name "Melinda" and last name "Harmon" clearly distinguishable.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE

